

TOWN PLANNING BOARD

Minutes of 503rd Meeting of the Metro Planning Committee held at 9:00 a.m. on 3.1.2014

Present

Director of Planning
Mr K.K. Ling

Chairman

Professor S.C. Wong

Vice-chairman

Professor P.P. Ho

Professor Eddie C.M. Hui

Ms Julia M.K. Lau

Mr Clarence W.C. Leung

Mr Roger K.H. Luk

Mr Sunny L.K. Ho

Mr Dominic K.K. Lam

Mr Patrick H.T. Lau

Mr Stephen H.B. Yau

Assistant Commissioner for Transport (Urban),
Transport Department
Mr W.B. Lee

Assistant Director (Environmental Assessment),
Environmental Protection Department
Mr K.F. Tang

Assistant Director (Hong Kong), Lands Department
Ms Doris M.Y. Chow

Deputy Director of Planning/District
Ms Brenda K.Y. Au

Secretary

Absent with Apologies

Chief Engineer (Works), Home Affairs Department
Mr Frankie Chou

Mr Maurice W.M. Lee

Mr Laurence L.J. Li

Ms Bonnie J.Y. Chan

Mr H.W. Cheung

In Attendance

Chief Town Planner/Town Planning Board
Mr Louis K.H. Kau

Town Planner/Town Planning Board
Ms Karen K.W. Chan

Agenda Item 1

[Open Meeting]

Confirmation of the Draft Minutes of the 502nd MPC Meeting held on 13.12.2013

1. The draft minutes of the 502nd MPC meeting held on 13.12.2013 were confirmed without amendments.

Agenda Item 2

Matters Arising

[Open Meeting]

2. The Secretary reported that there were no matters arising.

Tsuen Wan and West Kowloon District

Agenda Item 3

Section 12A Application

[Open Meeting]

Y/KC/5

Application for Amendment to the Draft Kwai Chung Outline Zoning Plan No. S/KC/26, from “Industrial” to “Other Specified Uses” annotated “Columbarium”, YLK Group Building at 22-24 Wing Kei Road, Kwai Chung (MPC Paper No. Y/KC/5)

3. The Secretary reported that the application was submitted by Dalon International Ltd., and Ove Arup & Partners Hong Kong Ltd. (ARUP) was the consultant of the applicant. Professor S.C. Wong, Messrs Dominic K.K. Lam and Patrick H.T. Lau had declared interests in this item as they had current business dealings with ARUP. As this item was for deferment of consideration of the application, the Committee agreed that Members who had declared interests could stay in the meeting.

4. The Committee noted that the applicant requested on 10.12.2013 for deferment of the consideration of the application for three months in order to allow time for preparation of further information to address the comments from various Government departments.

5. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Committee agreed that the application should be submitted for its consideration within three months from the date of receipt of further information from the applicant. The Committee also agreed to advise the applicant that two months were allowed for preparation of the submission of the further information, and no further deferment would be granted unless under very special circumstances.

Agenda Item 4

Section 16 Application

[Open Meeting]

A/TW/453 Proposed Office Development in “Residential (Group E)” Zone,
13-17 Fu Uk Road, Tsuen Wan (Kwai Chung Town Lot 169)
(MPC Paper No. A/TW/453)

6. The Secretary reported that the application was submitted by Starrylight Ltd., and CKM Asia Ltd., Environ Hong Kong Ltd. (Environ) and Sun Hung Kai Architects and Engineers Ltd., which was a subsidiary of Sun Hung Kai Properties Ltd., were the consultants of the applicant. The following Members had declared interests in this item:

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| Professor S. C. Wong | - being the Director of the Institute of Transport Studies of the University of Hong Kong (the Institute) and CKM Asia Ltd. had sponsored some activities of the Institute |
| Professor P.P. Ho | - having current business dealings with CKM Asia Ltd. |
| Ms Julia M.K. Lau | - having current business dealings with Environ and Sun Hung Kai Properties Ltd. |

- Mr Dominic K.K. Lam - having current business dealings with Environ and Sun Hung Kai Properties Ltd.
- Mr Patrick H.T. Lau - having current business dealings with Sun Hung Kai Properties Ltd.

7. Members noted that Professor P.P. Ho and Ms Julia M.K. Lau had not yet arrived to join the meeting. As this item was for deferment of consideration of the application, the Committee agreed that the other Members who had declared interests could stay in the meeting.

8. The Committee noted that the applicant requested on 11.12.2013 for deferment of the consideration of the application for two months in order to allow time for the applicant to prepare quantitative information/studies in response to the comments of the Commissioner for Transport and the Commissioner of Police on traffic impact aspect and await for the approval of the Coordinating Committee on Land-use Planning and Control relating to Potentially Hazardous Installations on the proposed development scheme.

9. After deliberation, the Committee decided to defer a decision on the application as requested by the applicant pending the submission of further information from the applicant. The Committee agreed that the application should be submitted for its consideration within two months from the date of receipt of further information from the applicant. The Committee also agreed to advise the applicant that two months were allowed for preparation of the submission of the further information, and no further deferment would be granted unless under very special circumstances.

[Miss Josephine Y.M. Lo, Senior Town Planner/Hong Kong (STP/HK), was invited to the meeting at this point.]

[Ms Julia M.K. Lau arrived to join the meeting at this point.]

Hong Kong District

Agenda Item 5

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/H12/29 Proposed House Development in “Green Belt” and “Residential (Group C) 1” Zones, 16 Bowen Road, Mid-levels East
(MPC Paper No. A/H12/29)

10. The Secretary reported that the application was submitted by Wealthy Trendy Ltd., and Llewelyn-Davies Hong Kong Ltd., MVA Hong Kong Ltd. and URS Corporation were the consultants of the applicant. The following Members had declared interests in this item:

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| Ms Julia M.K. Lau | - having current business dealings with MVA Hong Kong Ltd. |
| Mr Patrick H.T. Lau | - having current business dealings with Llewelyn-Davies Hong Kong Ltd. and MVA Hong Kong Ltd. |
| Mr Dominic K.K. Lam | - having current business dealings with MVA Hong Kong Ltd. and URS Corporation |

11. Noting that the above Members had no direct involvement in this application, the Committee agreed that they could stay in the meeting.

Presentation and Question Sessions

12. With the aid of a Powerpoint presentation, Miss Josephine Y.M. Lo, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application – the application was the subject of a previous planning application (No. A/H12/21) for a similar house development within the “Residential (Group C)1” (“R(C)1”) portion and

the ancillary facilities including a garden, vehicular access and open staircase within the “Green Belt” (“GB”) portion (the approved scheme). The approved scheme had not been implemented and the planning permission lapsed on 18.7.2012;

- (b) the ancillary facilities of a proposed 3-storey house development, including vehicular access, four covered car parking spaces, mechanical and electrical facilities, elevator, footbridge, gardens, and fence/retaining walls, fell within the “GB” zone;
- (c) departmental comments – departmental comments were set out in paragraph 10 of the Paper and summarized as follows:
 - (i) the District Lands Officer/Hong Kong East, Lands Department commented that the proposed development did not comply with the lease. Should approval be granted by the Committee, the owner of the lot was required to apply for a lease modification;
 - (ii) the Chief Building Surveyor/Hong Kong East and Heritage, Buildings Department commented that the proposed covered carparking spaces, elevator and covered footbridge within the “GB” zone were accountable for gross floor area (GFA) calculation under the Buildings Ordinance (BO). The proposed M&E facilities were also accountable for GFA calculation under the BO unless such provisions were mandatory/essential plant rooms and services and full justifications were provided during the building plan submission stage; and
 - (iii) the Chief Town Planner/Urban Design and Landscape, Planning Department commented that in comparison with the approved scheme, the proposed scheme had added building structures in the “GB” zone to house ancillary facilities, namely two pump rooms, an elevator and a footbridge. These ancillary facilities were largely located out of public views and by virtue of the scale would not result in significant visual impact;

- (d) during the statutory publication period on the application and the further information submitted by the applicant, eight public comments were received. Out of the eight public comments, six of them were in support of the application mainly for the reasons that the proposed development would enhance the visual and landscape quality of the area. Two public comments were against the application. One was submitted by Designing Hong Kong Limited who objected to the application mainly on the grounds that the proposed development was incompatible with the planning intention of “GB” zone and character of the area; the proposed use and development did not comply with the Town Planning Board Guidelines No. 10 for Application for ‘Development within “GB” zone under Section 16 of the Town Planning Ordinance’ (TPB PG-No. 10); there was no overriding need or public gain for the proposed development; and approval of the application would further degrade the environment and set an undesirable precedent for similar applications. The remaining one was submitted by a member of the public who disagreed with the development proposal as the concerned lot was zoned “GB” and was a public space co-owned by members of the public which should not be encroached on or damaged by private developments or commercial activities; and

[Mr Clarence W.C. Leung arrived to join the meeting at this point.]

- (e) the Planning Department (PlanD)’s views – PlanD had no objection to the application based on the assessments set out in paragraph 12 of the Paper which were summarized as follows:
- (i) while the proposed house was always permitted within the “R(C)1” zone, planning permission was being sought for the proposed ancillary facilities, including vehicular access, four covered car parking spaces, M&E facilities, elevator, footbridge, gardens, and fence/retaining walls, fell within the “GB” portion. The concerned “GB” portion, which was currently largely paved, had been granted to the applicant in 1977 for the provision of access to the house within the “R(C)1” portion which was situated on a platform higher than Bowen Road. Having

regard to its land status and existing conditions, this “GB” portion did not function similarly as other “GB” zones which were intended for public enjoyment;

- (ii) as compared with the approved scheme, the planning circumstances had largely remained the same since then. The proposed GFA, site coverage and building height for the house development were essentially the same under the current scheme. The major changes involved only an increase in number of housing units from one to two, and hence a reduction in average flat size and the provision of additional ancillary facilities. While the car parking spaces and most of the M&E facilities in the approved scheme were arranged within the “R(C)1” portion, all the proposed ancillary facilities were now located in the “GB” portion. Such arrangement did not involve any material increase in GFA as compared with the approved scheme;
- (iii) the M&E facilities, fire service installations were required to serve the car parking area and vehicular access, while the utility plant rooms were to be located near the site entrance as generally required by relevant Government departments/utility companies for maintenance purpose. All relevant Government departments had no adverse comments on the provision of those facilities;
- (iv) locating the additional facilities in the “GB” portion would result in larger extent of excavation/formation works towards the slope area in the south-western corner of the site. Nevertheless, concerned Government departments had no adverse comments on the proposed development and further encroachment onto the existing slope area from geotechnical and slope stability perspectives;
- (v) given the small scale, the proposed ancillary facilities within the “GB” portion of the site were not incompatible with the setting of the area. The applicant had explained that as the site was located in the uphill area surrounded by natural vegetation, the proposed development

would not be highly visible except from viewing at a close distance. Close view along Bowen Road towards the proposed ancillary facilities would be largely screened off by the proposed peripheral landscape treatment, tree planting and fence wall. Thus, adverse visual impacts caused by the proposed development were not anticipated;

- (vi) the proposed ancillary facilities were largely erected on the existing paved area. The two trees to be felled were in poor health condition and considered acceptable to be felled for safety sake. Significant landscape impacts were thus not envisaged. Besides, the landscape proposals submitted included compensatory planting of 9 heavy standard trees, roof-top and vertical greening and setting back of the existing retaining wall for landscaping;
- (vii) regarding the traffic and environmental aspects, the Commissioner for Transport and the Director of Environmental Protection had no adverse comment on the application. Other relevant Government departments had no adverse comments or objection to the application; and
- (viii) for the concern of the commenters on the compatibility of the proposed development with the planning intention of “GB” zone and character of the area, and further degradation of the environment, the assessment in paragraphs 12.1 to 12.8 of the Paper was relevant. Concerning the lack of overriding need or public gain for the proposed private development to encroach upon the “GB” zone and setting of undesirable precedent for similar applications, the subject “GB” zone had been granted to the applicant in 1977 for access road purpose and was largely paved. This was different from other “GB” zones which were intended for public enjoyment. Given the unique site circumstances, approval of the application would not set an undesirable precedent for other similar applications.

13. In response to a Member’s question, Miss Josephine Y.M. Lo said that the proposed house development was permitted within the “R(C)1” portion of the site i.e. lot

IL2304. The concerned “GB” portion had been granted to the applicant in 1977 as an extension to IL2304 for the provision of an access road for pedestrian traffic and garden to the house development.

14. A Member said that as the proposed ancillary facilities such as the covered car parking spaces should be GFA accountable, those proposed facilities might be in breach of the planning intention of the “GB” zone in which there was a general presumption against development. In response, Miss Josephine Y.M. Lo said that only the area of the “R(C)1” portion of the site was included in the calculation of plot ratio (PR). A domestic PR of not more than 1.86 was proposed under the current scheme, which was the same as that in the approved scheme. According to the Buildings Department, the proposed covered car parking spaces, elevator and covered footbridge within the “GB” zone were accountable for GFA calculation and detailed checking for compliance with the BO would be made upon the building plan submission stage. Miss Lo added that unlike the approved scheme, which was intended for a single-family house, there were two residential units in the current scheme and the additional ancillary facilities were accommodated in the “GB” portion of the site.

15. In response to the Chairman’s enquiry, Miss Josephine Y.M. Lo confirmed that the “GB” portion of the site had been granted by the Lands Department (LandsD) to the applicant in 1977 as an extension to IL2304.

16. In response to a Member’s enquiry, Ms Doris M.Y. Chow, Assistant Director (Hong Kong), LandsD confirmed that the proposed vehicular access, driveway, structures/buildings, elevator, footbridge, canopy and their uses on the extension area were in breach of the lease. Should approval be granted by the Committee, the owner of the lot was required to apply to LandsD for a lease modification.

Deliberation Session

17. A Member asked whether the approval of the application would set an undesirable precedent for the development in “GB” zone. Miss Josephine Y.M. Lo said that the concerned “GB” portion had been granted to the applicant in 1977 for the provision of an access road for pedestrian traffic and garden to the house development within the “R(C)1” zone. Based on a recent site visit, the land within the extension area was largely paved with

scarce vegetation. Having regard to its land status and existing conditions, this “GB” portion did not function similarly as other “GB” zones which were intended for public enjoyment. Hence, approving the current application would not set an undesirable precedent for other similar applications.

18. After further deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board. The permission should be valid until 3.1.2018, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following conditions :

- “(a) the implementation of the loading/unloading arrangement, as proposed by the applicant, to the satisfaction of the Commissioner for Transport or of the Town Planning Board;
- (b) the provision of fire service installations and water supplies for firefighting to the satisfaction of the Director of Fire Services or of the Town Planning Board;
- (c) the submission and implementation of a Drainage Impact Assessment to the satisfaction of the Director of Drainage Services or of the Town Planning Board;
- (d) the submission of a Sewerage Impact Assessment to the satisfaction of the Director of Environmental Protection or of the Town Planning Board;
- (e) the implementation of a Sewerage Impact Assessment to the satisfaction of the Director of Drainage Services or of the Town Planning Board; and
- (f) the submission and implementation of tree preservation and landscape proposals to the satisfaction of the Director of Planning or of the Town Planning Board.”

19. The Committee also agreed to advise the applicant of the following :

- “(a) the approval of the application does not imply that the proposed building design elements could fulfil the requirements under the Sustainable Building Design Guidelines and the relevant requirements under the lease, and that the proposed gross floor area (GFA) concessions for the proposed development will be approved/granted by the Building Authority. The applicant should approach the Buildings Department and Lands Department direct to obtain the necessary approval. If the building design elements and the GFA concessions are not approved/granted by the Building Authority and the Lands Authority and major changes to the current scheme are required, a fresh planning application to the Town Planning Board may be required;
- (b) to note the comments of the District Lands Officer/Hong Kong East, Lands Department as follows:
- (i) to apply for modification of lease conditions which may be subject to the terms and conditions as imposed by the Lands Department;
 - (ii) to seek approval for tree felling under the lease; and
 - (iii) to liaise with the owner(s) of No. 14 Bowen Road as the proposed development may affect the licence “NH0124” for laying, construction and maintenance of a pipeline for purpose of flushing water to the lot;
- (c) to note the comments of the Commissioner for Transport that future request for adjustment to the traffic arrangement of Bowen Road solely for the proposed development will not be agreed to and the applicant should liaise with other agent(s) of building construction site(s) in the vicinity to minimize the cumulative construction traffic impact during the construction stage;
- (d) to note the comments of the Chief Building Surveyor/Hong Kong East and Heritage, Buildings Department regarding the requirements laid down under PNAP APP-151 and 152, the calculation of GFA, and that the development intensity of the proposed development shall be determined by

the Building Authority upon submissions of building plans;

- (e) to note the comments of the Chief Engineer/Hong Kong & Islands, Drainage Services Department in respect of the technical requirements of the sewerage and drainage impact assessments;
- (f) to note the comments of the Director of Fire Services that the arrangement of emergency vehicular access shall comply with the Code of Practice for Fire Safety in Buildings 2011 and detailed fire safety requirements will be formulated upon receipt of formal submission of general building plans;
- (g) to note the comments of the Head of Geotechnical Engineering Office, Civil Engineering and Development Department (CEDD) in respect of the need to review the adequacy of the findings from the NTSB (S2(H)) report and mitigation measures provided under the CEDD Contract No. GE/2010/21, and to assess the risk of natural terrain hazards affecting the proposed development and if necessary provide mitigation measures to the satisfaction of the Buildings Department and Geotechnical Engineering Office during the detailed design stage;
- (h) to note the comments of the Chief Geotechnical Engineer/Slope Maintenance, Lands Department in respect of the need to ensure that the proposed development would have no adverse effects on its adjacent slope No. 11SW-D/C1380, which is currently maintained by the Lands Department;
- (i) to note the comments of the Director of Agriculture, Fisheries and Conservation in respect of the need to avoid/minimise the impact of the proposed development on the existing trees as far as practicable; and
- (j) to note the comments of the Director of Leisure and Cultural Services in respect of the need to minimise the adverse impact on the greenery and to apply more greening concept in the design so as to integrate the building structure and its associate facilities into the surrounding environment for

the compensation of loss of greenery, if any.”

[The Chairman thanked Miss Josephine Y.M. Lo, STP/HK, for her attendance to answer Members’ enquiries. She left the meeting at this point.]

[Miss Isabel Y. Yiu, Senior Town Planner/Hong Kong (STP/HK), was invited to the meeting at this point.]

Agenda Item 6

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/H19/67 Proposed Utility Installation for Private Project (Cable Trench, Drainage, Water Pipe and Maintenance Staircase) in “Green Belt” Zone, Government Land adjoining 18 Carmel Road (Rural Building Lot No. 701), Stanley
(MPC Paper No. A/H19/67B)

Presentation and Question Sessions

20. With the aid of a Powerpoint presentation, Miss Isabel Y. Yiu, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the proposed utility installation for private project (cable trench, drainage, water pipe and maintenance staircase);
- (c) departmental comments – departmental comments were set out in paragraph 10 of the Paper. Concerned Government departments had no objection to or no adverse comment on the application;
- (d) during the first three weeks of the statutory publication period, one public comment was received objecting to the application. The main reasons for

objecting the application were summarized below:

- (i) it was not understood why the applicant could not make use of or share the existing staircase and utility pipelines next to the application site as the proposed staircases and pipelines were in close proximity to those existing;
 - (ii) the proposed utility installation would degrade the greenery and natural view of the existing green belt slope. It would also weaken the slope structure; and
 - (iii) the proposed utility installation would affect the existing pedestrian sidewalk and jeopardize pedestrian safety; and
- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application based on the assessments set out in paragraph 12 of the Paper. Regarding the public concern on the necessity of the proposed utility installation at the application site, the applicant had explained that sharing facilities with the house at 20 Carmel Road was not acceptable due to the current standards and regulations. According to the Chief Engineer/Hong Kong & Island, Drainage Services Department, drainage facilities should be connected separately to public drains. Sharing the existing staircase and construction of the cable trench/trough alongside was considered not acceptable by Hong Kong Electric Company Limited due to technical impracticability as the cables could not be bent and part of the cables would have no covered protection. The proposed development would not affect the greenery and natural view as it would be screened by existing vegetation.

21. Members had no question on the application.

Deliberation Session

22. After deliberation, the Committee decided to approve the application, on the terms of the application as submitted to the Town Planning Board. The permission should be valid until 3.1.2018, and after the said date, the permission should cease to have effect unless before the said date, the development permitted was commenced or the permission was renewed. The permission was subject to the following condition :

“the submission and implementation of tree preservation and landscape proposals to the satisfaction of the Director of Planning or of the Town Planning Board.”

23. The Committee also agreed to advise the applicant of the following :

“(a) to note the comments of the District Lands Officer/Hong Kong West & South, Lands Department in paragraph 10.1.1 of the Paper regarding the application for permission to carry out the proposed works on government land and to take up a short term tenancy for the proposed utility installation and compensatory planting etc;

(b) to note the comments of the Director of Agriculture, Fisheries and Conservation in paragraph 10.1.6 of the Paper regarding the preservation of existing mature trees in-situ as far as possible;

(c) to note the comments of the Chief Engineer/ Hong Kong & Islands, Drainage Services Department in paragraph 10.1.7 of the Paper regarding the submission of drainage connection plans and hydraulic calculations to the Building Authority for approval; and

(d) to note the comments of the Chief Engineer/Development (2), Water Supplies Department in paragraph 10.1.8 of the Paper regarding the existing and proposed water mains at the vicinity of the site and the procedures and practice described in the “Condition of Working in the Vicinity of Water Works Installations”.”

[The Chairman thanked Miss Isabel Y. Yiu, STP/HK, for her attendance to answer Members' enquiries. She left the meeting at this point.]

[Ms W.H. Ho, Senior Town Planner/Hong Kong (STP/HK), was invited to the meeting at this point.]

Agenda Item 7

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/H20/180 Shop and Services (Retail Shop) in "Industrial" Zone, Workshop 8,
G/F, Block B, Ming Pao Industrial Centre, 18 Ka Yip Street, Chai Wan
(MPC Paper No. A/H20/180)

Presentation and Question Sessions

24. With the aid of a Powerpoint presentation, Ms W. H. Ho, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the shop and services (retail shop);
- (c) departmental comments – departmental comments were set out in paragraph 9 of the Paper. Concerned Government departments had no objection to or no adverse comment on the application;
- (d) no public comment was received during the first three weeks of the statutory publication period and no local objection was received by the District Officer (Eastern), Home Affairs Department; and
- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application based on the assessments set out in paragraph 11 of the Paper.

25. Members had no question on the application.

Deliberation Session

26. After deliberation, the Committee decided to approve the application on a temporary basis for a period of three years until 3.1.2017, on the terms of the application as submitted to the Town Planning Board and subject to the following conditions :

- “(a) the submission and implementation of proposals for fire service installations, water supplies for firefighting and means of escape completely separated from the industrial portion within six months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 3.7.2014;
- (b) if the above planning condition is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.”

27. The Committee also agreed to advise the applicant of the following :

- “(a) a temporary approval of three years is given in order to allow the Committee to monitor the compliance of the approval condition and the supply and demand of industrial floor space in the area to ensure that the long term planning intention of industrial use for the subject premises will not be jeopardized;
- (b) to note the comments of the Director of Fire Services to observe “Guidance Note on Compliance with Planning Condition on Provision of Fire Safety Measures for Commercial Uses in Industrial Premises”; and
- (c) to note the comments of the Chief Building Surveyor/Hong Kong East and Heritage, Buildings Department that the applicant is advised to ensure compliance with the Code of Practice for Fire Safety in Buildings 2011, in particular its Table B2; and the provisions of access and facilities for

persons with a disability as required under Building (Planning) Regulation 72.”

Agenda Item 8

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/H20/181 Temporary Shop and Services (Retail Shop and Photographic Studio) for a Period of Two Years in “Other Specified Uses” annotated “Business” Zone, Workshop 5, G/F, Cheung Tat Centre, 18 Cheung Lee Street, Chai Wan
(MPC Paper No. A/H20/181)

28. Mr Dominic K.K. Lam declared an interest in this item as his company owned premises in Cheung Tat Centre. The Committee considered that Mr Dominic K.K. Lam’s interest was direct and agreed that Mr Lam should leave the meeting temporarily.

[Mr Dominic K.K. Lam left the meeting temporarily at this point.]

Presentation and Question Sessions

29. With the aid of a Powerpoint presentation, Ms W. H. Ho, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

- (a) background to the application;
- (b) the temporary shop and services (retail shop and photographic studio) for a period of two years;
- (c) departmental comments – departmental comments were set out in paragraph 9 of the Paper. Concerned Government departments had no objection to or no adverse comments on the application;

- (d) during the first three weeks of the statutory publication period, one public comment from Cheung Tat Centre Management Services Centre with no objection to the application was received; and
- (e) the Planning Department (PlanD)'s views – PlanD had no objection to the application based on the assessments set out in paragraph 11 of the Paper.

30. Members had no question on the application.

Deliberation Session

31. After deliberation, the Committee decided to approve the application on a temporary basis for a period of two years until 3.1.2016, on the terms of the application as submitted to the Town Planning Board and subject to the following conditions :

- “(a) the submission and implementation of proposals for fire service installations, water supplies for firefighting and means of escape completely separated from the industrial portion within six months from the date of planning approval to the satisfaction of the Director of Fire Services or of the Town Planning Board by 3.7.2014;
- (b) if the above planning condition is not complied with by the specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice.”

32. The Committee also agreed to advise the applicant of the following :

- “(a) prior planning permission should have been obtained before commencing the applied use at the application premises;
- (b) to apply to the District Lands Officer/Hong Kong East, Lands Department for lease modification or a temporary waiver to permit the use under application at the subject premises; and
- (c) to note the comments of the Director of Fire Services that the applicant is

advised to observe “Guidance Note on Compliance with Planning Condition on Provision of Fire Safety Measures for Commercial Uses in Industrial Premises” and “Code of Practice for Fire Safety in Buildings”.

[The Chairman thanked Ms W. H. Ho, STP/HK, for her attendance to answer Members’ enquiries. She left the meeting at this point.]

[Mr K. S. Ng, Senior Town Planner/Hong Kong (STP/HK), was invited to the meeting at this point.]

[Mr Dominic K.K. Lam returned to join the meeting at this point.]

Agenda Item 9

Section 16 Application

[Open Meeting (Presentation and Question Sessions Only)]

A/H11/103 Proposed Minor Relaxation of Plot Ratio Restriction for Permitted ‘Flat’ Development in “Residential (Group B)” Zone, 23 Babington Path, Mid-Levels West
(MPC Paper No. A/H11/103C)

33. The Secretary reported that the application was submitted by Well Success Capital Investment Ltd., and Llewelyn-Davies Hong Kong Ltd. was the consultant of the applicant. Mr Patrick H.T. Lau had declared an interest in this item as he had current business dealings with Llewelyn-Davies Hong Kong Ltd., Professor S.C. Wong and Ms Doris M.Y. Chow had declared interests in this item as the application site was close to Professor Wong’s office in the University of Hong Kong and Ms Chow’s property. As Mr Patrick H.T. Lau had no direct involvement in this application, the Committee agreed that he could stay in the meeting. Members noted that the office of Professor S.C. Wong and the property of Ms Chow did not have direct view on the application site and agreed that they could stay in the meeting.

Presentation and Question Sessions

34. With the aid of a Powerpoint presentation, Mr K. S. Ng, STP/HK, presented the application and covered the following aspects as detailed in the Paper :

Proposal

- (a) the paper was for the further consideration of the proposed minor relaxation of the plot ratio (PR) restriction from 5 to 5.325 for a residential development;

Background

- (b) the application site was the subject of a previous application No. A/H11/98 which was approved with conditions by the Committee on 20.5.2011 for minor relaxation of PR from 5 to 5.357 for proposed surrender and dedication of land for road widening. Subsequent to the approval, the applicant found that the total area of land to be surrendered and dedicated was actually 80.2m² instead of 75.6m² and the bonus PR to be claimed should be 0.379 instead of 0.357. Hence, a fresh application (No. A/H11/101) for minor relaxation of the PR restriction from 5 to 5.379 was submitted by the applicant. The application (A/H11/101) was approved with conditions by the Committee on 5.8.2011;

[Professor C.M. Hui left the meeting at this point.]

- (c) the applicant had recently discovered that there was a calculation error in the site area during the carving out process of the subject lot. The application site was part of IL1216 which had a total site area of 174,754ft². The lot was subsequently sub-divided into a number of sections among private parties and registered by memorials in the Land Registry. According to the information provided by the applicant, the parent lot IL1216 S.B. ss.2 (Lot A), with an area of 20,900ft², was divided into IL1216 S.B ss.2 S.A (Lot B, with an area of 7,151ft²) and IL1216 S.B ss.2 RP(Lot C with an area of 11,849ft²) in 1954. There was an error in the calculation of the site area of Lot C and an area of 1,900ft² had been missed

out. Subsequently, Lot C was divided into IL1216 S.B ss.2 S.B (Lot D with an area of 455ft²) and IL1216 S.B ss.2 RP (Lot E with an area of 11,394ft² or 1,059m²). It was noted that the areas of Lots A, B and D were shown on the plans attached to the assignment documents as registered by memorials in the Lands Registry. Both Lot B and Lot D had been developed into Rowen Court, which was located to the immediate east of the application site. The applicant claimed that given the carving history, the missing out area of 1,900ft² (equivalent to 176m²) should belong to Lot E, i.e. the application site. And the site area of Lot E should be 1,235m² instead of 1,059m² as stated in the two previous applications. The applicant had also carried out a land survey to verify the site area. According to the certified survey report, the actual survey area (i.e. 1,259.7m²) was even slightly greater than the alleged site area (i.e. 1,235m²) in the planning application. In this regard, while the area to be surrendered and dedicated for road widening in the current application would remain unchanged as the approved application No. A/H11/101, the increase in site area would result in corresponding changes to the major development parameters including increase in the total GFA by 880m² and number of flats by 15 units for the proposed development;

- (d) on 8.2.2013, the Committee considered the subject application. Members in general had no disagreement to the granting of bonus PR due to the proposed road widening. They also had no objection to the changes in the built form and building bulk of the applicant's development proposal arising from the granting of bonus PR. The only issue in concern was whether the increase in GFA due to the alleged site area was acceptable. Given that the accuracy of the site area had not been verified by relevant authority, Members were of the view that a decision could not be made on whether the "missing out" site area of 1,900ft² (equivalent to 176m²) as claimed by the applicant belonged to the applicant's lot. After deliberation, the Committee decided to defer a decision on the application pending the provision of expert advice from relevant Government departments, including the Lands Department, on the site area of the application;

Further information submitted by the applicant

- (e) on 30.12.2013, the applicant submitted further information in support of the application which was summarized as follows:
- (i) it was impractical to seek agreement from all the adjoining lot owners on the site area issue;
 - (ii) the chartered surveyor's report was the only available information that could be adopted for the purpose of deriving the development parameters;
 - (iii) refusal by Government departments to verify the lot area should not be a reason for the Town Planning Board (the Board) to reject the case. The application was to seek the Board's approval in relation to the bonus GFA based on the surrendered and dedicated areas, which was not related to the site area; and
 - (iv) the physical site area of the subject lot was occupied by buildings. It was usually not the Board's domain to verify the site area;

Approval of Building Plans by the Building Authority

- (f) the Buildings Department advised that the applicant had submitted a set of building plans based on the alleged site area of 1,235m² as indicated in the subject application to the Building Authority (BA) for approval on 12.4.2013. The PR of the proposed development was 5 without claiming bonus PR for the proposed surrender and dedication of land for road widening. The AP had also submitted records from the Lands Registry confirming that there were 4 owners for the subject site. The applicant was one of the 4 owners and authorized by the other 3 owners to deal with building plan submission. The set of building plans satisfied BA that there was "realistic prospect of control" of the subject site and was approved by BA on 10.5.2013. Under section 14(2)(a) of the Buildings Ordinance, BA's approval did not confer any land title;

Departmental comments

- (g) as a follow-up action to the Committee's decision, the Planning Department (PlanD) had sought further expert advice from the Director of Lands (D of Lands) on the site area of the application. Comments of the D of Lands were summarized as follows:
- (i) it was the developer's responsibility to provide evidence to substantiate its claims about the location of the boundaries and site area for the lot in question, and to demonstrate that the owners of the adjoining lots (who might be affected) did not disagree with those claims;
 - (ii) LandsD was not in a position to verify the location of the boundaries and site area within the information provided by the developer;
 - (iii) it was the developer's responsibility to deal with any boundary/site area disputes with the owners of the adjoining lots; and
 - (iv) as a pragmatic way out, the Board might wish to consider giving conditional approval for the bonus PR based on the site area as currently claimed, with a caveat that the bonus might be adjusted as necessary in the light of any further adjustment to the lot boundaries/disputes that might be proposed by the owners of the adjoining lots. PlanD was advised to seek the advice of the Department of Justice's (DoJ) if the Board should also obtain an indemnity from the lot owner against any claims that might be made by owners of the adjoining lots in respect of the share of the "missing out" area arising from the previous carving out exercise of the parent lot;
- (h) on the indemnity issue, PlanD had sought advice from the DoJ. It was proper for the Board to protect itself by seeking an indemnity for exercise of its planning approval power. However, seeking an indemnity from the

applicant by the Board should only be the last resort, as the Board did not have or had only little experience in taking or enforcing indemnity and therefore it was likely to find great difficulties in the process; and

The PlanD's views

- (i) PlanD did not support the application based on the assessments set out in paragraph 3 of the Paper. The main concern was whether the applicant's claim of ownership of the "missing out" area of 176m² was valid. The approval of the building plans could not fully address the Board's concern that the "missing out" area belonged to the applicant. On verification of the site boundary/area, D of Lands had no further advice to the Board. Given the above, it was unable to confirm the legal land entitlement of the "missing out" area of 176m². Of the additional area claimed, an additional GFA of 880m² was incidental to the "missing out" area. There was no reason why the Committee should grant a GFA increase if the concerned area did not belong to the applicant. If the original site area of 1,059m² was adopted, the scheme under the current application would result in a PR of 6.21, and the extent of PR relaxation from 5 to 6.21 would be substantial and not justified;

35. In response to the Chairman's enquiry, Mr K.S. Ng referred to Plan A-5 of the Paper and said that the land information of Lot A, Lot B and Lot D could be found on the plans attached to the assignment documents as registered by the memorials in the Land Registry. However, for Lot E (i.e. the application site), the area of 11,394ft² or 1,059m² was provided by the applicant by calculation. The Secretary referred to PlanD's Powerpoint slide 4 and clarified that there was an error in the calculation of site area of Lot C and an area of 1,900ft² had been missed out when it was carved out in 1954. As shown on Page 1 of Annex FA-1 of the Paper, the current application site was 1,235m² (equivalent to 13,293ft²) which had already included the "missing out" area of 1,900ft² or 176m². Hence, the site area under application was larger than Lot E as shown on Plan A-5 to Annex FA-1 of the Paper.

36. In response to the Chairman's follow-up question, Mr K.S. Ng said that according to the information provided by the applicant, the parent lot IL1216 S.B. ss.2 (Lot

A), with an area of 20,900ft², was divided into IL1216 S.B ss.2 S.A (Lot B, with an area of 7,151ft²) and IL1216 S.B ss.2 RP (Lot C with an area of 11,849ft²) in 1954. There was an error in the calculation of the site area of Lot C and an area of 1,900ft² had been missed out. Given the carving out history, the applicant claimed that the “missing out” site area of 1,900ft² should belong to him. Mr K.S. Ng further said that the applicant had also carried out a land survey to verify the site area of the application site. According to the certified survey report, the actual survey area (i.e. 1,259.7m²) was even greater than the alleged site area (i.e. 1,235m²) in the planning application.

37. A Member asked whether the applicant’s site had included Lot D, which was part of Rowen Court. Mr K.S. Ng said that both Lot B and Lot D had been combined and developed into Rowen Court. The Occupation Permit of Rowen Court issued in June 1988 indicated that the site area was about 7,600ft² with a PR of 7.993. The application site did not include Lot D.

[Professor P.P. Ho arrived to join the meeting at this point.]

Deliberation Session

38. The Chairman said that according to the land survey report submitted by the applicant, the actual survey area was even greater than the alleged site area in the planning application. In this regard, the Chairman enquired whether LandsD had any comment on the land survey report submitted by the applicant. In response, Ms Doris M.Y. Chow said that Lot IL1216 was carved out into a number of sections under private agreement. The plans submitted by the applicant were not Government lease plan but plans attached to the assignment documents entered into among private parties and registered by memorials in the Land Registry. Given the carving history, it was hard to determine whether there was an error during the lot carving out process and which party actually had a claim of the “missing out” area. LandsD was not in a position to verify the site boundaries and site areas originating from the private agreement. The applicant should verify the site boundaries and actual site area to avoid any encroachment onto neighboring lots. Regarding the certified survey report provided by the applicant, Ms Chow said that LandsD had no comment on it, but the matter was not a question of survey.

39. A Member concurred with the above views and said that the lot was carved out into a number of sections under private agreement, it should be the responsibility of individual lot owners to verify the boundaries and site areas of their lots. Moreover, even if any inaccuracy was found, the Board would not be in a position to verify such discrepancy nor to determine the ownership of that piece of land. On the indemnity issue, this Member did not consider that the Board should obtain an indemnity from the lot owner against any future claims that might be made by the owners of the adjoining lot in respect of the share of the “missing out” area arising from the previous carving out exercise of the parent lot.

40. In response to the Chairman’s enquiry, Mr K.S. Ng said that apart from Lot A to Lot E, the remaining portion of the IL1216 was sub-divided into individual lots owned by various owners and developed into different residential developments such as First Mansion and Lytteton Garden.

41. A Member said that as the accuracy of the site area of 1,235m² as alleged by the applicant could not be verified, the Committee was not in a position to arbitrate the ownership of the “missing out” area. Another Member shared the same view. The same Member said that the Committee should focus on whether the extent of minor relaxation of the PR restriction sought was acceptable from the land use planning perspective.

42. The Secretary referred to Annex FA-1 of the Paper and clarified that under the current application, the applicant sought planning permission for minor relaxation of the PR restriction from 5 to 5.325. The site area of the application site was 1,235m² which had included the “missing out” area of 176m². However, if the original site area of 1,059m² was adopted, the scheme under the current application would result in a PR of about 6.21. Under such circumstances, the extent of relaxation of PR from 5 to 6.21 would be substantial and not justified. Hence, PlanD did not support the application.

43. The Vice-chairman said that the Committee was not in a position to verify the accuracy of the alleged site area. For the current application, as the total GFA had increased from 5,696m² under the previous approved scheme (Application No. A/H11/101) to 6,576m², the Committee should consider whether the increase in the bulk of the development due to the change in the site area was acceptable.

44. A Member said that the Committee should only consider the application for minor relaxation of the PR restriction with reference to the site area based on official information. This Member considered that the site boundaries/area provided in the land survey report was not a land document. Moreover, BD had confirmed that the approval of the building plans did not confer any land title. Due to the ambiguity of the land ownership of the “missing out” area, the Committee could only consider the application based on the site area of 1,059m².

45. In response to a Member’s enquiry, the Secretary said that similar to the two previously approved scheme, there was planning merit in the applicant’s proposal as the applicant proposed to surrender and dedicate a setback area for traffic improvement measures. However, as the larger site area claimed could not be verified by the applicant, the Committee, at its meeting on 8.2.2013, deferred making a decision on the application pending the clarification of the site area.

46. In response to Ms Doris M.Y. Chow’s enquiry, the Secretary referred to page 3 of Annex FA-1 of the Paper and said that the application site was the subject of two previous applications (No. A/H11/98 and A/H11/101), the site area under those two applications was 1,059m². The applicant sought planning permission for minor relaxation of the PR restriction from 5 to 5.357 and 5.379 respectively for proposed surrender and dedication of land for road widening. The bonus GFA claimed by the applicant under Application No. A/H11/101 was 401m², which was the same as that in the current application. However, with the site area increased from 1,059m² to 1,235m², there was an increase in total GFA by 880m².

47. The Chairman said that under the current application, the applicant applied for minor relaxation of the PR from 5 to 5.325, based on a site area of 1,235m². There was no change in the bonus GFA of 401m² claimed by the applicant.

48. Members generally agreed that the application could not be supported as the extent of the relaxation of the PR restriction from 5 to 6.21, based on the site area of 1,059m², as shown in the relevant land documents, would be substantial and not justified.

49. After further deliberation, the Committee decided to reject the application.

Members then went through the reason for rejection as stated in paragraph 4.1 of the Paper and agreed that the reason for rejection should be amended to reflect Members' concerns.

The reason was :

“Based on the site area owned by the applicant as shown in the land documents, the extent of PR relaxation is substantial and not justified.”

[The Chairman thanked Mr K. S. Ng, STP/HK, for his attendance to answer Members' enquiries. He left the meeting at this point.]

Agenda Item 10

Any Other Business

Section 16A Application

[Open Meeting (Presentation and Question Sessions Only)]

A/K5/719-4

Extension of Time for Compliance with Planning Condition –

Shop and Services (Showroom) in “Other Specified Uses” annotated “Business(2)” Zone, Workshop No. A6, G/F, Block A, Hong Kong Industrial Centre, 489-491 Castle Peak Road, Kowloon

(MPC Paper No. A/K5/719-4)

50. The Secretary reported that an application for extension of time (EOT) for compliance with planning condition (a) under application No. A/K5/719 was received on 31.12.2013. The application was approved by the Committee for shop and services (showroom) use subject to approval conditions. Approval condition (a) was related to the submission and implementation of fire safety measures within six months by 6.1.2013. The applicant subsequently submitted three EOT applications for compliance with the subject approval condition and the compliance period had been extended from six months to a total of 18 months up to 6.1.2014. The current EOT application was received on 31.12.2013, which was only four days before the deadline for compliance with condition (a) on 6.1.2014. According to the Town Planning Board Guidelines No. 34B for ‘Renewal of Planning Approval and Extension of Time for Compliance with Planning Conditions for Temporary Use or Development’, an application submitted less than six weeks before the expiry of the

specified time limit might not be processed for consideration of the Board, as there was insufficient time to obtain departmental comments before the expiry of the specified time limit for compliance with the condition which were essential for the consideration of the application. Hence, the application would not be considered.

51. After deliberation, the Committee agreed that the application for EOT for compliance of planning conditions could not be considered for reason that the application for EOT was submitted four days before the expiry of the specified time limit for condition (a), i.e. 6.1.2014, the Committee could not consider the section 16A application.

52. There being no other business, the meeting closed at 10:50 a.m..